CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-06-000256-046

SUPERIOR COURT
(CLASS ACTIONS)

CLAUDE RAVARY

Plaintiff

v.

CI MUTUAL FUNDS INC.
-and-
CIBC ASSET MANAGEMENT INC.
-and-
AIC LIMITED

Defendants

DEFENCE OF CI MUTUAL FUNDS INC.

IN DEFENCE TO PLAINTIFF'S RE-AMENDED AND RE-PARTICULARIZED MOTION TO INSTITUTE PROCEEDINGS (THE "MOTION"), DEFENDANT CI MUTUAL FUNDS INC. RESPECTFULLY SUBMITS THE FOLLOWING:

GENERAL INTRODUCTION

1. By its Motion, the Plaintiff alleges that:

    a) Between January 1st, 2000 and December 31st, 2003 (the "**CLASS PERIOD**"), the Defendants have allowed or failed to prevent the practice of market timing (as defined by Plaintiff in paragraph 3 of the Motion, which is not admitted for the purpose of the present proceedings and in the following paragraphs of its Defence) in the funds listed at paragraph 1 of the Motion (hereinafter the « **CI FUNDS** »);

    b) The main prejudice suffered by the class members as a result of the market timing practice would have been the dilution of the return on their units in the funds;

    c) The transactions involving market timing would also have caused other types of damages, such as higher management fees and additional brokerage costs, as well as losses resulting from the Defendants' management inefficiencies;

2. The Plaintiff's claim is ill-founded considering that:

a) There is no contractual relationship between the class members and CI in its capacity of fund manager;

b) There is no fiduciary duty between the class members and CI in its capacity of fund manager and Plaintiff has failed to allege an extracontractual cause of action;

c) In any case, at all times relevant to the present matter, CI Mutual Funds Inc. (now known as CI Investments Inc. and hereinafter "**CI**") acted as a prudent, diligent and reasonable fund manager insofar as;

   i. At no time during the relevant period was the practice of market timing illegal or prescribed by regulations, and CI was not, and was not required to be, aware of such practice insofar as CI was never warned or notified by the regulatory authorites of its existence and impact on the return on the class members' units;

   ii. CI was not, and could not have reasonably been expected to have been, aware of the existence or impact of the alleged market timing trading by certain investors in its funds. Indeed, no market timing in the CI Funds stems from CI's failure to act in good faith, in the best interests of such funds, or from a practice whereby CI favoured its own interests, or the interests of market timers, over the interests of the class members;

   iii. At no time relevant to the present matter did CI allow market timing in the funds. CI enterered into agreements to impose restrictions with certain investors who were engaged in frequent trading at a quantum that CI felt ought to be restricted to protect the funds from the potential costs to the funds of the frequent trading at such levels(frequent trading being an otherwise acceptable investment activity that was being undertaken by certain investors in its funds, who were then, unbeknownst to CI, engaging in certain alleged intentional trading activities that the Plaintiff seeks to characterize as market timing);

d) The class members suffered no loss for which CI is liable;

e) In any case, the class members were compensated for all the losses they may have suffered as a result of the market timing practice they complain about, by the payment received from CI in the context of the proceedings with the *Ontario Securities Commission* ("**OSC**");

DEFENDANT'S PLEA

3. With respect to paragraphs 1 and 2 of the Motion, CI refers to the authorization judgment and denies everything not in conformity therewith and adds that the funds identified at paragraph 1 of the Motion were the object, during the relevant period,

of different mergers and changes of name, as appears from the chart communicated hereto as **Exhibit D-1**;

The Representative

4. With respect to sub-paragraphs 1.1 and 1.2, CI admits that Plaintiff held units in one of the CI Funds. Namely, he acquired, on December 13, 1999, units in the CI Global Telecommunication Sector Fund (which eventually merged with, and continued as, the CI Global Science and Technology Sector Fund on or about August 27, 2003) and redeemed its units on January 24, 2006;

Basis of the Action

5. With respect to paragraph 3 of the Motion, CI refers to Justice Gouin's judgment rendered on June 30, 2015 regarding the characteristics identified by Plaintiff of a "RDT's transaction" for the purpose of the present action, which CI does not admit, and denies the rest of the allegations;

6. CI denies the allegations contained at sub-paragraphs 3.1 to 3.5 of the Motion adding that large movements in and out of the CI Funds or high churn rates are not necessarily indicative of market timing activity (as opposed to other frequent trading);

7. CI denies the allegations contained at sub-paragraphs 3.6 to 3.8 of the Motion, insofar as:

   a) The measures referred to by Plaintiff were not required or even standard procedures adopted by mutual fund managers, and in many cases were ineffective or impractical;

   b) CI entered into agreements with certain institutional investors engaged in frequent trading activities of a certain quantum during the Class Period whose trading could potentially create additional costs for the CI Funds. The purpose of these agreements was to more than offset the potential costs associated with these investors frequent trading;

8. CI denies paragraphs 4 and 7 of the Motion which are irrelevant as they fail to disclose facts in support of the action and the conclusions are speculative;

9. CI denies the allegations set out at paragraphs 5, 6 and 8 of the Motion:

   a) CI did not knowingly or recklessly permit market timing activities to occur in the CI Funds, nor was CI aware during the Class Period that such market timing activity was occurring;

   b) CI's conduct was consistent with the prevailing practices in the Canadian mutual fund industry and the standard of care of mutual fund managers at that time;

c) The Plaintiff's assertions that CI was required to recognize and take steps to completely prevent market timing from occurring in the CI Funds is not only unrealistic, but more importantly, it would also not be required under any reasonable and objective standard of care imposed on mutual fund managers at the time;

10. CI denies the allegation set out at paragraph 9 insofar as:

a) The amount of $200,000,000 referred to at paragraph 9 of the Motion rather results from numerous settlement agreements including, among others, the OSC, Defendants CI and AIC Limited (the "**SETTLEMENT AGREEMENT**") (Exhibit P-14);

b) The Settlement Agreement, P-14, specifically mentioned that there was no admission of any breach of any applicable securities laws or of the existence, or breach, of any fiduciary or other duty owed to CI's respective funds or to investors during the Class Period and the Settlement Agreement explicitly reserved the rights of CI to make full defence to any court proceeding and deny civil liability;

The Damages

11. CI denies the allegations contained at paragraphs 10 to 16 of the Motion. While the issue of the existence and quantum of damages has been referred to the second stage of the proceedings, CI denies that the Plaintiff has suffered any injury, economic loss or damages at all as a result of CI's conduct;

The Causal Link

12. CI denies the allegations contained at paragraphs 17 to 22 of the Motion;

The Contractual and Statutory Framework of This Class Action

13. CI denies as drafted paragraphs 23 and 24 of the Motion for the reasons more fully described below;

Creation of the Funds

14. With respect to paragraphs 25, 27 and 28, CI admits that CI Sector Fund were established by way of an *Open-End Mutual Fund* (hereinafter "**OEMF**") and that each fund is a class of non-cumulative, redeemable, restricted voting, convertible special shares of an OEMF with its own investment objectives and strategies and ignores the rest of the allegations contained in those paragraphs;

15. CI ignores paragraphs 26, 30 and 31 of the Motion;

16. CI admits paragraph 29 of the Motion;

17. With respect to paragraph 32 to 34 of the Motion, CI prays act of the fact that Plaintiff did not consult, prior to filing their claim, the constitutive document and internal management by-laws of the CI Sector Fund OEMF and denies the rest of the allegations contained in those paragraphs;

18. CI ignores the allegations set out at paragraphs 35 to 36 of the Motion;

19. With respect to paragraphs 37 and 38 of the Motion, CI refers to the trust deeds communicated as exhibits P-2.1 to P-2.20 which speak for themselves, specifying that:

    a) The trust deeds referred to as Exhibits P-2.1 to P-2.20 concerns only a portion of the funds which were legally organized as open-ended unincorporated trusts pursuant to declarations of trusts and were separate and distinct entities from Defendant CI;

    b) The remaining CI Funds, including the fund in which Plaintiff held its shares, were part of a mutual fund corporation incorporated by articles of incorporation under the laws of Ontario which is a legally separate and distinct entity from CI;

20. CI ignores the allegations set out at paragraph 39 to 41 of the Motion;

21. With respect to paragraph 42 of the Motion, CI refers to the trust deeds communicated as Exhibits P-2.1 to P-2.20 and denies everything that is inconsistent therewith;

Management of the Funds

22. CI denies the allegations contained at paragraphs 43 to 45 and 52 of the Motion as the Plaintiff conflates CI, as the fund manager, with the CI Funds themselves, which are distinct legal entities. The CI Funds are corporations and trusts established under the law of the province of Ontario and their manager, Defendant CI, is a corporation amalgamated under the laws of the province of Ontario, as appears from the management contract of the CI Funds, P-5;

23. CI ignores the allegations set out at paragraphs 46 and 47 of the Motion;

24. With respect to paragraphs 48 and 49 of the Motion, CI refers to the management contract for the CI Funds communicated as Exhibit P-5 and denies everything that is inconsistent therewith;

25. CI ignores of the allegations set out at paragraphs 50 to 51 of the Motion;

Distribution of the Funds

26. With respect to the allegations contained in paragraphs 53, 54 and 56 of the Motion, CI admits that every person intending to make a distribution of securities

shall prepare a prospectus that must provide full, true and plain disclosure of all material facts relating to the securities issued or proposed to be distributed;

27. CI denies the allegations set out at paragraph 55 of the Motion;

28. With respect to paragraphs 56 to 58, CI refers to CI's simplified prospectus communicated as Exhibits P-8 and P-9 and denies everything that is inconsistent therewith;

29. CI ignores the allegations set out at paragraphs 59 to 61 of the Motion;

30. With respect to paragraphs 62 to 63 of the Motion, CI refers to CI's simplified prospectus communicated as Exhibits P-8 and P-9 and denies everything that is inconsistent therewith;

31. CI denies paragraph 64 of the Motion as mutual funds were available for a variety of investment objectives;

32. CI ignores the allegations set out at paragraphs 65 to 66 of the Motion;

33. With respect to paragraph 67 of the Motion, CI:

    a) Refers to the simplified prospectus communicated as Exhibits P-8 and P-9 and denies everything that is inconsistent therewith;

    b) Denies that all the CI Funds were only designed to suit investors who wish to invest therein over a long term as mutual funds were available for a variety of investment objectives;

    c) Underlines that Plaintiff acknowledged that short-term trading fee is subject, at the fund manager's discretion, of a possible redemption fees up to 2%;

    d) Investors in the CI Funds were thus on notice by virtue of this disclosure that frequent trading may be permitted in the CI Funds and that any fees or other restrictions applied in connection with any short term trading would be at the discretion of the fund manager;

34. CI denies paragraph 68 of the Motion;

Regulatory Environment

35. With respect to paragraphs 69 to 70 of the Motion, CI refers to National Instrument 81-102, Exhibit P-11, which speaks for itself specifying that these dispositions established duties owed by mutual fund managers to the funds themselves but does not establish duty or civil liability owed by mutual fund manager to investors in those funds. National Instrument 81-102 first became effective on February 1, 2000, amended May 2, 2001;

36. With respect to paragraph 71 of the Motion, CI refers to the *Code of Ethics* of the *Investment Funds Institute of Canada* ("**IFIC**"), Exhibit P-12, which speak for itself, specifying that the IFIC is a grouping of actors in the investment funds market that acts as an informal forum for funds dealers and managers. As such, its publication does not have any official or legal weight and rather serve as indicators or guidelines regarding best industry practices;

37. With respect to paragraph 72 of the Motion, CI refers to the articles of the *Civil Code of Québec* ("**CCQ**") cited by the Plaintiff in its Motion, which speak for themselves, specifying that these dispositions established duties owed by mutual fund managers to the funds themselves but does not establish duty or civil liability owed by mutual fund manager to investors in those funds. Moreover, based on Plaintiff's allegations and the fact that the different CI trust funds were constituted on the basis of Ontario law, the application of the conflict of law leads to the conclusion that Ontario law should apply to the present action. In addition, Quebec law does not apply since Plaintiff has failed to allege an extracontractual cause of action or any other cause of action that would be governed by Quebec;

The Sanctions Imposed by the OSC

38. CI admits paragraph 73 of the Motion;

39. With respect to paragraph 74 of the Motion, CI refers to the agreements communicated as Exhibits P-13 and P-14 and denies everything that is inconsistent therewith, adding that the Plaintiff is not entitled to rely on these settlements as it was expressly agreed as part of the Settlement Agreement with CI, P-14, that it was not *"intended to restrict CI from making full answer and defense to any civil proceedings against it"*, that it was *"without prejudice to [CI] [...] in any other proceedings of any kind including [...] any civil or other proceeding which may be brought by any other person [...]"*. The Settlement Agreement expressly prohibited reliance on it by any other person whether or not approved by the OSC;

40. CI ignores the allegations contained at paragraphs 75 to 77 of the Motion;

41. CI denies the allegations of paragraph 78 of the Motion;

42. With respect to the allegations set out at paragraphs 79 and 80 of the Motion, CI refers to paragraph 18 of the Settlement Agreement, P-14, and denies all that is not in conformity therewith, adding that not all of the profit realized by the market timing traders was from frequent trading market timing transactions, and the profit realized by the market timing traders does not equate to harm to other investors in CI Funds;

43. With respect to paragraphs 81 to 85 of the Motion, CI, for the above-mentioned reasons, refers to Exhibits P-13 to P-15 and denies all that is inconsistent herewith;

44. CI denies the allegations contained at paragraphs 84 and 86 to 88 of the Motion as the Plaintiff bears the onus of proof in this action and that onus cannot be

discharged by the fact or substance of the OSC Proceeding or Settlement Agreement. The CI Settlement Agreement was not based on and does not establish duties that give rise to civil liability. Even if investor harm from market timing activity was eventually identified, after the fact and with the benefit of hindsight, and the OSC, in the exercise of its public interest jurisdiction, approved the compensation that the settlement agreements provided to investors (including the Plaintiff) that does not mean that CI had any civil liability or duty to detect and prevent market timing from occurring during the Class Period;

45. CI denies the allegations contained at paragraph 89 of the Motion;

46. CI denies paragraphs 90 to 92 of the Motion adding that the class definition of the present class action does not exclude the market timers allegedly responsible for the harm suffered by the class members;

47. CI ignores the allegation set out at paragraph 93 of the Motion;

The Experts

48. CI denies paragraphs 94 to 100 of the Motion which alleges inadmissible and irrelevant proof that has absolutely no probative value;

49. With respect to the allegations contained at paragraphs 101 to 105 of the Motion, CI refers to the applicable legislation and denies all that is inconsistent therewith;

50. CI denies the allegations contained at paragraphs 106 to 108.2 of the Motion, specifying that the data requested by the Plaintiff constitutes a fishing expedition;

51. CI denies the allegations contained at paragraphs 109 to 113 of the Motion;

52. CI denies the allegations contained at paragraph 114 and further adds that collective recovery is not possible in the present file;

AND FOR FURTHER DEFENCE TO PLAINTIFF'S MOTION, DEFENDANT CI STATES THE FOLLOWING:

The Certified Common Issues for Trial

53. In the Authorization Judgment, the Court identified as follows the main common points of law to be resolved:

> *1. Were the respondents aware, or should they have been aware, of the market timing practice that was occurring in the Funds?*
>
> *2. Were the respondents aware, or should they have been aware, of the impact that was having the market timing practice on the return on the Class members' units?*

3. *Have the respondents allowed or failed to prevent the practice of market timing in the Funds?*

4. *Have the respondents failed to fulfill their duties toward the Class members during the relevant period?*

5. *What are the damages suffered by the class members as a result of the market timing?*

54. On November 12, 2015, Justice Gouin split the case so as to proceed to an independent hearing on the questions 1 to 4, prior to the hearing (if required) regarding the damages, adding that:

    a) The Court will not have to settle the issue of the existence of damage, this question being referred to the second stage of the proceedings, if any;

    b) The Plaintiff is not required to prove that the alleged facts have actually caused injury to the class members resulting in damages;

    c) The Defendants could not rely on the fact that the Plaintiff have not proven that the alleged facts caused injury to the class members as part of their defense at the first stage hearing;

    d) Nevertheless, the parties may submit evidence regarding the fact that, generally, the presence of market timing transactions is capable, or not, of negative impacts on the return of mutual funds holders units;

55. The answers to questions 1 to 5 are negative as at all relevant times to the present matter:

    a) CI had no contractual relationship with the class members during the relevant period in its capacity of fund manager;

    b) There is no fiduciary duty between the class members and CI in its capacity of fund manager and Plaintiff has failed to allege an extracontractual cause of action. Indeed, CI owed its duties to the CI Funds, not to the Plaintiff, and all such duties were fulfilled;

    c) CI was not, and could not have reasonably been expected to have been, aware of the existence or impact of the alleged market timing trading by certain investors in its funds. Indeed, no market timing in the CI Funds stems from CI's failure to act in good faith, in the best interests of such funds, or from a practice whereby CI favoured its own interests, or the interests of market timers, over the interests of the class members;

    d) CI acted as a reasonably prudent and diligent mutual fund manager insofar as:

i. At no time did CI knowingly permit the market timing activity of which the Plaintiff complains;

ii. During the relevant time, market timing as an activity was not illegal or proscribed by any regulatory enactment and its extent and potential effects were not something about which the mutual fund industry had been warned to guard against or had received guidance from the relevant securities regulatory organizations;

iii. The relevant standard of care expected of mutual fund managers during the Class Period did not require that CI take steps to detect and prevent the market timing activity of which the Plaintiff complains and it owed no fiduciary or other duty to the Plaintiff to do so;

iv. CI did take reasonable steps during the Class Period to protect the CI Funds from foreseeable harm when it became aware of certain investors who were seeking to engage in frequent trading activities in its funds at levels that could potentially create additional costs for the funds (but these certain investors did not disclose they intended to engage in market timing). CI entered into agreements with those investors to restrict this type of trading and impose fees which were paid into the relevant funds which more than offset any additional costs to the funds;

e) The Plaintiff suffered no losses for which CI is responsible; moreover, he has been compensated for any losses he may have suffered from the market timing activity he complains of by payments previously made to him by CI through the OSC Proceeding (defined below);

The Defendant CI and its Funds

56. CI is a wholly owned subsidiary of CI Funds Management Inc. (now known as CI Financial Corp.) which is a publically traded corporation with its head office in Ontario;

57. At all relevant time, CI was registered in Ontario as an investment counsel and portfolio manager and was the fund manager of over 100 mutual funds (currently the manager of over 200 funds);

58. The assets under management in the CI Funds were approximately $6 billion at the end of 2003;

59. CI was the fund manager retained by the mutual fund corporation (CI Corporate Class Limited) in which Plaintiff's shares were held;

60. Indeed, some of the CI Funds were part of a mutual fund corporation incorporated by articles of incorporation under the laws of Ontario which is a legally separate and distinct entity from CI;

61. The following are the CI Funds that are part of CI Corporate Class Limited (each held through a separate class of shares):

- BPI International Equity Sector
- European Sector Fund
- Global Boomeronics Sector Fund
- Global Financial Services
- International Balanced Sector Fund
- Japanese Sector Fund
- Pacific Sector Fund
- Emerging Markets Sector Fund
- Global Sector Fund
- Global Technologies Sector Shares
- Global Telecommunication Sector Shares

62. The remaining CI Funds were legally organized as open-ended unincorporated trusts pursuant to declarations of trusts governed by the laws of Ontario and were also legally separate and distinct entities from CI. The following are the CI Funds that are constituted as trusts:

- Asian Dynasty Fund
- BPI Global Equity
- BPI International Equity
- BPI International Equity RSP
- European Fund
- European Growth Fund
- European Growth RSP
- Emerging Markets Fund
- Global Equity RSP

- Global Fund
- Global Small Companies RSP Fund
- Global Value Fund
- International Balanced Fund
- International Fund
- International Value Fund
- International RSP Fund
- Japanese RSP Fund
- Pacific Fund
- Pacific RSP Fund

Absence of Legal Relationship Between Plaintiff and CI

63. Where the CI Funds was part of a corporation, investors (such as the Plaintiff) were shareholders of the corporation;

64. CI, as a fund manager, was retained by the corporation pursuant to a management agreement;

65. Plaintiff never had any contractual relationship with CI as fund manager;

66. In light of the above, CI did not owe any duties to shareholders of the corporation but to the corporation itself. Thus, Plaintiff has no right or standing, as shareholders of the corporation, to complain about alleged wrongs done to the corporation;

67. CI did not owe any other duty towards the Plaintiff under statute, regulation or contracts to prevent market timing activities in the CI Funds;

68. The same is true where the CI Funds were a trust. CI was retained as the manager by the fund pursuant to a management agreement, as appears from Exhibits P-2.1 to P-2.20 and P-5;

69. As appears from the present proceeding, CI is not sued in its capacity as trustee of the CI Funds nor was the action was ever drafted against the trusts, through its trustee CI;

70. Thus, any duties that CI owed were to the fund as a whole, not to individual unitholders who do not have a right of action for wrongs allegedly done to the fund;

71. With respect to those CI Funds that are constituted as trusts, the duties owed by CI as fund manager to the CI Funds which are trusts are not owed to, or actionable by, investors in those trusts;

72. The Plaintiff accordingly has no right or standing based on the grounds asserted in the Motion to assert a direct cause of action against CI;

73. It is also relevant to note that the different CI Funds were constituted on the basis of Ontario law and obligations pertaining to the administration of the mutual funds contained in the management contract P-5 is governed by the laws of Ontario;

74. Those trusts were administrated in Ontario, the trust property was situated there and the trustee of those funds was and is resident in that province;

75. The conduct of mutual fund managers in Ontario is regulated under the Securities Act (Ontario) R.S.Q. 1990, Chapter S.5 (the "**SECURITIES ACT**"), the administration of which is the responsibility of the OSC. This statute establishes duties owed by mutual fund managers to the funds themselves but does not establish any duty or civil liability owed by mutual fund managers to investors in those funds;

76. In any event, the duties of the mutual fund manager to the fund are to be honest and act in good faith, in the best interests of the fund in accordance with the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances. CI at all times complied with these duties;

77. Thus, if CI were considered to have obligations to the members of the CI Class (which is denied), CI asserts that it met or exceeded any and all duties it may have owed in relation to any market timing activities during the Class Period;

78. At all relevant times and in relation to any market timing activities in the CI Funds, CI exercised its powers and discharged its duties honestly, in good faith and in the best interests of the CI Funds, and in connection therewith, CI exercised the degree of care, diligence and skill and business judgment that a reasonably prudent person would exercise in the circumstances;

79. In the circumstances of this case, the risk of damage caused to the CI Funds by any third party market timers was not a reasonable risk which, based on the standard of care of mutual fund managers at the time, CI was required to take steps to prevent, as more fully described above;

Existence of Market Timing Practice and its Impact

80. Market timing is an investment technique that is now known to involve short-term "in and out" trading of mutual funds but, unlike other types of frequent trading, it sought to take advantage of the fact that the value of a mutual fund (known as the Net Asset Value or "**NAV**") was, according to established industry practice at the relevant time, calculated only once per day, at 4:00 p.m. E.T., and that as a result of

time zone differences in market trading hours, the value of foreign equities in a fund might not necessarily reflect the most current market information;

81. More specifically, it is now known that a market timer sought to take advantage of the fact that there may be a correlation between price movements of equities in North American markets on one day and price movements of equities in foreign markets on the following trading day, and invest (or divest) in or out of mutual funds that held foreign equities when they believed that the price of the shares or units in the fund on a given day might not reflect possible price movements on foreign markets;

82. Market timing is distinct from "frequent trading" which, though it also involves short-term trading, is not designed to take advantage of stale-dated pricing based on time zone differences;

83. While the effects of market timing activities are now understood and known, this was not the case during the Class Period;

84. Indeed, it was not until the Fall of 2003 in the lead up to a Mutual Fund Probe (as defined below) conducted by the OSC that the Canadian mutual fund industry became aware of the extent and effects of "market timing";

85. The circumstances existing during the Class Period were that at all relevant times, market timing was lawful and was not the subject, in Canada, of any regulatory prohibition, sanction, or warning. Although the mutual fund industry was aware of the potential risks of frequent trading (for example, potentially imposing costs on the fund), frequent trading can occur for many reasons and does not necessarily imply that market timing is occurring;

86. Thus, any occurrence of market timing activities in the CI Funds was not caused by, and did not arise as a result of, any failure on CI's part to act in good faith, honestly and in the best interests of the CI Funds with regard to any market timing activities in the CI Funds, or as a result of CI favouring its own interests or the interests of any market timers over the interests of the Plaintiff who were among the other investors in the CI Funds;

87. CI did not knowingly or recklessly permit market timing activities to occur in the CI Funds, nor was CI aware during the Class Period that such market timing activity was occurring;

88. Moreover, CI's conduct was consistent with the prevailing practices in the Canadian mutual fund industry and the standard of care of mutual fund managers at that time. The Plaintiff's assertions that CI was required to recognize and take steps to completely prevent market timing from occurring in the CI Funds is not only unrealistic, but more importantly, it would also not be required under any reasonable and objective standard of care imposed on mutual fund managers at the time;

89. For example, and without limitation, large movements in and out of the funds or high churn rates are not necessarily indicative of market timing activity (as opposed to other frequent trading);

90. The duties of the mutual fund manager to the fund are to be honest and act in good faith, in the best interests of the fund in accordance with the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances. CI at all times complied with that duty;

Prevention of the Practice of Market Timing

91. Although the mutual fund industry was aware of the potential risks of frequent trading (for example, potentially imposing costs on the fund), frequent trading can occur for many reasons and does not necessarily imply that market timing is occurring;

92. Starting in or about 1999, CI became aware that certain institutional investors wished to engage in frequent trading in certain CI Funds;

93. The investors did not disclose their trading strategy or that market timing would be involved, nor should CI have detected that;

94. CI entered into agreements with certain institutional investors that it believed were engaged in a certain level of frequent trading activities that warranted restrictions;

95. These agreements were designed to compensate the CI Funds from the potential costs related to the administration of the funds of the frequent trading these investors might engage in;

96. At all relevant times during the Class Period, CI did not know or have reasonable cause to believe that these (or other) investors were engaged in market timing activities;

97. Contrary to the Plaintiff's assertion that CI permitted or participated in the market timing activities, the agreements that CI entered into were intended to restrict frequent trading by certain investors to ensure that such frequent trading did not interfere with the ongoing administration and management of the CI Funds;

98. Among other things, CI charged fees to these frequent trading investors under such agreements;

99. These fees were paid into the relevant CI Funds and were intended to exceed any costs which may have been imposed on the funds as a result of the quantum of these investors' trades;

100. In addition to these fees, the agreements with these institutional investors generally also included (among other things) some or all of the following provisions:

a) limited the investors' trading to specific identified funds;

b) limited the size of the investors' investment in the specified funds;

c) limited the amount of switches the investors could make within a certain period; and

d) gave CI the ability to terminate the agreements upon 10 days' notice;

101. In entering into these agreements, CI considered the interests of the CI Funds, sought to protect these interests by putting in place these restrictions, and met the standard of care applicable at the time, whether contractual, statutory at common law or in equity;

The OSC Mutual Fund Probe

102. The conduct of mutual fund managers in Ontario is regulated under the Securities Act, the administration of which is the responsibility of the OSC;

103. The OSC is a specialized expert administrative tribunal and agency responsible for the administration and enforcement of securities law in Ontario;

104. The OSC's mandate is to provide protection to investors from unfair, improper or fraudulent practices and to foster fair and efficient capital markets and investor confidence in capital markets;

105. In November 2003, the OSC launched an investigation into the mutual fund industry in response to concerns that market timing was occurring in Canada (the "**MUTUAL FUND PROBE**");

106. The Mutual Fund Probe was an intensive investigation by the OSC into market timing;

107. Ultimately, its focus was on the trading activity in certain funds, including the CI Funds, and the funds of other fund managers that were considered to have been targeted by the market timers;

108. CI fully co-operated with the OSC's investigation and the OSC concluded, among other things, that there was no evidence of continuing market timing activity;

The OSC Proceeding and Settlement Agreement

109. It's clear, from the outset, that CI Settlement Agreement does not contain any admission of <u>any</u> breach of any applicable securities laws or of the existence, or breach, of any fiduciary or other duty owed to CI's respective funds or to investors during the Class Period and the Settlement Agreement explicitly reserved the rights of CI to make full defence to any court proceeding and deny civil liability;

110. The CI Settlement Agreement was not based on and does not establish duties that give rise to civil liability;

111. Under their broad public interest jurisdiction, OSC Staff negotiated at arm's length and entered into Settlement Agreement with CI and other fund managers such as AIC Limited pursuant to which compensation would be paid directly to affected investors;

112. The Settlement Agreement were referred to the OSC for approval in the context of enforcement proceedings in respect of the past trading activity of identified market timers in the CI and AIC's funds (and in other funds as well);

113. Pursuant to the CI Settlement Agreement, CI agreed to pay $49.3 million directly to investors and former investors in the CI Funds. All of CI class members have potentially received compensation;

114. An additional $9.6 million was distributed proportionately to the affected investors pursuant to agreements between other regulators, namely the Investment Dealers Association of Canada and/or the Mutual Fund Dealers Association of Canada and the securities dealers through whom the identified market timers had traded;

115. By reasons dated December 16, 2004, a panel of Commissioners of the OSC approved the Settlement Agreement as being in the public interest;

116. The total amounts paid by CI pursuant to the Settlement Agreement were distributed to affected investors, at its sole expense, pursuant to plans of distribution which accomplished a fair allocation of the settlement amounts amongst the investors in a timely manner. The development of each plan of distribution was overseen, and its implementation was reviewed, by an independent consultant and ultimately approved by the OSC;

117. Indeed, even if investor harm from market timing activity was identified after the fact and with the benefit of hindsight and the OSC, in the exercise of its public interest jurisdiction, approved the compensation that the Settlement Agreement provided to investors (including the Plaintiff) that does not mean that CI or the other Defendants had any civil liability or duty to detect and prevent market timing from occurring during the Class Period, let alone a duty to the Plaintiff directly;

The Plaintiff Has not Suffered any Damages or Have Already Been Fully Compensated Through the OSC Proceeding

118. Although the Plaintiff has not specified the quantum of damages he allegedly suffered, CI denies that the Plaintiff and CI class members have suffered any injury, economic loss or damages at all as a result of CI's conduct, denies that the Plaintiff and CI class members are entitled to damages, compensation or any other relief for such and puts the Plaintiff to the strict proof thereof;

119. In accordance with Justice Gouin's judgment of November 12, 2015, CI will further address in details this issue at the second stage of the proceedings;

120. In any event, and in the alternative, in light of the foregoing and of CI's payments pursuant to the CI Settlement Agreement in the OSC Proceeding, the Plaintiff and CI class members have already been fully compensated for any resulting harm or losses which they may have suffered as a result of the market timing activity occurring in the CI Funds during the Class Period;

121. CI denies that the Plaintiff and CI class members are entitled to receive any further amounts once those amounts paid have been properly accounted for. To the extent the Plaintiff and CI class members seek to rely on the OSC Proceeding or the Settlement Agreement, their alleged damages should be capped to those identified by the OSC (and already compensated for);

122. The present Defence is well-founded in fact and in law;

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the present Defence;

DISMISS the *Plaintiff's Re-Amended and Re-Particularized Motion to Institute Proceedings*;

THE WHOLE with costs, including expert costs.

MONTREAL, January 15, 2016

Woods LLP

WOODS LLP
Attorneys for CI Mutual Funds Inc.

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-06-000256-046

SUPERIOR COURT
(CLASS ACTIONS)

CLAUDE RAVARY

Plaintiff

v.

CI MUTUAL FUNDS INC.
-and-
CIBC ASSET MANAGEMENT INC.
-and-
AIC LIMITED

Defendants

LIST OF EXHIBITS

Exhibit D-1: Copy of the chart.

MONTREAL, January 15, 2016

Woods LLP

WOODS LLP
Attorneys for CI Mutual Funds Inc.

No : 500-06-000256-046

COUR SUPÉRIEURE
DISTRICT DE MONTRÉAL
PROVINCE DE QUÉBEC

CLAUDE RAVARY

Demandeur

c.

FONDS MUTUELS CI INC.
-et-
GESTION D'ACTIFS CIBC INC.
-et-
AIC GLOBAL HOLDINGS INC.

Défenderesses

DEFENCE OF CI MUTUAL FUNDS INC.

ORIGINAL

Me Marie-Louise Delisle
Me Sébastien Richemont
Dossier no : 4295-1

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